

**REMARKS****Status of the Claims**

Upon entry of the amendment above, claims 14-44 and 46-61 will be pending, claims 14, 15, 29, 30, 44, and 58 being independent.

**Summary of the Office Action**

The specification is objected to for not providing antecedent bases for certain terms appearing in claim 30.

Claim 30 is rejected under 35 USC §112, second paragraph, as being indefinite.

Claims 14-18, 20-23, 25, 26, 28, 29, 35-42, and 44-47 are rejected under 35 USC §102(b) as being anticipated by ELLIS et al. (U.S. Patent No. 3,206,874, hereinafter "ELLIS"). See Section 7, on page 3 of the Office action.

Claims 27, 43, and 48 are rejected under 35 USC §103(a) as being unpatentable over ELLIS. See Section 11, on page 6 of the Office action.

Claims 32-34 are rejected under 35 USC §103(a) as being unpatentable over ELLIS in view of French Patent Publication No. 2 361 837 (hereinafter "LANDRY"). See Section 12, beginning on page 6 of the Office action.

Claims 19, 30, and 31 are rejected under 35 USC §103(a) as being unpatentable over ELLIS in view of EDWARDS et al. (U.S. Patent No. 3,334,427, hereinafter "EDWARDS"). See Section 13, on page 7 of the Office action.

Claims 14-18, 20-22, 25, 26, 28, 29, 35-42, and 44-47 are rejected under 35 USC §102(b) as being anticipated by O'DONNELL (U.S. Patent No. 3,068,593). See Section 8, on page 4 of the Office action.

Claims 32-34 are rejected under 35 USC §103(a) as being unpatentable over O'DONNELL in view of LANDRY. See Section 14, on page 7 of the Office action.

Claims 19, 30, and 31 are rejected under 35 USC §103(a) as being unpatentable over O'DONNELL in view of EDWARDS. See Section 15, on page 8 of the Office action.

Claims 14, 15, 18, 19, 20, 22, 26, 28, 29, 30, 31, 33, 37, 38, 39, 40, 41, 42, 44, and 45 are rejected under 35 USC §102(b) as being anticipated by EDWARDS. See Section 9, beginning on page 5 of the Office action.

Claims 27, 43, and 48 are rejected under 35 USC §103(a) as being unpatentable over EDWARDS. See Section 17, beginning on page 8 of the Office action.

Claims 16, 17, 21, 23, 24, 25, 46, and 47 are rejected under 35 USC §103(a) as being unpatentable over EDWARDS in view of ELLIS. See Section 16, on page 8 of the Office action.

Claim 24 is identified as containing allowable subject matter, but is objected to for depending from rejected claims.

#### **Response to the Office Action**

##### **A. Withdrawal of Objection to Specification**

In response to the objection to the specification, Applicant has amended the specification by adding new paragraph 0030.1 which makes mention of phrases that appear in claim 30.

In view of the amendment, withdrawal of the objection is requested.

##### **B. Withdrawal of Rejection of Claim 30 Under 35 USC §112, Second Paragraph**

In response to the rejection of claim 30 for lacking antecedent basis for the expression "said end zone of said upper," Applicant has provided such basis in the amendment to claim 30 above.

In view of the amendment, withdrawal of the rejection is requested.

##### **C. Summary of the Invention**

The invention is directed to an article of footwear and, in a particular embodiment, a shoe that includes a high upper, *i.e.*, an upper that extends above the ankle of the wearer and which is positioned along the lower leg of the wearer, such as in front of the tibia of the wearer.

A particular field of endeavor to which the invention is directed is that of snowboarding. As explained in the background and summary sections of the specification of the instant application, current snowboard boots (and other sports boots) must satisfy various demands of the user, some of which are contradictory. For example, a boot should be comfortable for the user and, for example, should enable him/her to perceive plantar sensations during the sport, *i.e.*, during snowboarding. On the other hand, if the upper of the boot is not sufficiently rigid, the transmission of forces from the rider to his/her board is less than optimum.

According to the invention, then, at least the front-to-rear rigidity of the boot is enhanced by means of a cover, *i.e.*, a front spoiler, whereby the tibial support zone of the boot is less easily flexed about the flexion fold (*i.e.*, the flexion crease) of the boot toward the front end zone of the boot. Thus, with the cover in place on the boot, in which the cover extends from at least the front end zone of the boot and into the flexion fold zone, the cover interferes with the free flexing of the boot that would be possible without the cover.

**D. Summary and Prefatory Comments Regarding §102(b), §103(a) Rejections**

Because of the relatively large number of grounds of rejection (*viz.*, ten) under 35 USC §102 and 35 USC §103, Applicant provides here a summary of his position regarding the documents relied upon.

Applicant will treat together the disclosures of ELLIS and O'DONNELL, because of their similarity. In fact, each of the ten grounds of rejection relies primarily upon ELLIS, O'DONNELL, or EDWARDS and each of these references is directed to a instep guard for a shoe.

In the latest Office action to which Applicant is now responding, the Examiner has newly relied upon EDWARDS, presumably because EDWARDS discloses an extension --- a *flexible* extension --- of the instep guard. Thus, free flexing of the shoe is maintained.

In Applicant's remarks which follow he makes reference to a technical dictionary and other sources for the purpose of providing a clearer description of certain terms and their

locations with regard to other parts of a shoe. These terms include "instep", "flexion fold", and "tibia." In so doing, Applicant intends to establish the fact that *rigid* covers of ELLIS, O'DONNELL, and EDWARDS cannot, within the parameters laid out by each of these references, extend to the flexion fold of their shoes.

**E. Withdrawal of Rejections Primarily Based Upon ELLIS or O'DONNELL**

Applicant requests that the rejections under 35 USC §102(b) and §103(a), based upon ELLIS and O'DONNELL, alone or in combination with LANDRY, be withdrawn.

Applicant respectfully submits that the rejections based upon ELLIS and O'DONNELL are erroneous for reasons previously presented.

Herein, Applicant kindly requests that the Examiner reconsider at least the following points and, in so requesting, Applicant will make reference to certain terminology that appear in the claims as amended above.

**1. The Covers of the Shoes of ELLIS and O'DONNELL Do *Not* Cover the Flexion Fold Zone**

According to the Office action, ELLIS and O'DONNELL are relied upon to reject, *inter alia*, independent claims 14, 15, 29, and 44.

The disclosures of each of ELLIS and O'DONNELL expressly describes that *free flexing of the boot is to be maintained in spite of the presence of the guard*.

In Section 20 of the Office action, under the heading "Response to Arguments," the Examiner states that "[c]ontrary to applicant's argument the device of O'Donnell '593 and O'Donnell '593 do not interfere with the flexing of the shoe." This statement is repeated within the body of each of the ELLIS and O'DONNELL rejections under 35 USC §102(b).

Applicant has not argued to the contrary. In fact, that is precisely his point --- the devices of ELLIS and O'DONNELL *do not interfere with the flexing of the shoe*; Applicant's cover *does* interfere with the flexing of the shoe; Applicant's cover rigidifies his shoe, *i.e.*, Applicant's shoe is flexurally stiffened with his cover in place. Neither ELLIS nor O'DONNELL are concerned with flexurally stiffening their shoes. They desire the contrary.

The §102(b) rejection of each of ELLIS and O'DONNELL includes the statement "the location of the flexion fold zone is dependent on the type and size of the shoe and will vary from one type of shoe to another."

Whether or not this allegation is true (and Applicant submits that it is not, as remarked below), it is irrelevant.

That is, the rejections are based upon the alleged anticipation by ELLIS and O'DONNELL of Applicant's claimed invention. Therefore, the disclosures of each of ELLIS and O'DONNELL presumably disclose each and every limitation presented in Applicant's rejected claims. Consequently, Applicant submits that the rejections, if proper, should include an explanation as to how the covers of ELLIS and O'DONNELL extend in the zone of the flexion fold of the uppers of their shoes, *i.e.*, the rejections should provide evidence in the form of a teaching or a suggestion that the covers extend in the manner alleged.

Independent claims 14 and 15, particularly as amended above, specify that the cover is rigid or semi-rigid and that it extends from within the flexion fold zone to the front end zone of the shoe. Similarly, independent claim 29 specifies that the cover covers the flexion fold zone and extends forwardly to the front end zone of the shoe. Independent claim 44 specifies that the cover increases flexural rigidity of the boot, whereby the upper of the boot is relatively flexible and, in the front end zone and in the flexion fold zone the cover is relatively rigid.

Even without regard to the relative rigidity of portions of the cover, neither of the covers of ELLIS and O'DONNELL extend to be within a flexion fold zone of their shoes.

In column 1, lines 38-43, ELLIS explains that his guard flap "extends rearwardly over the toe, metatarsal and instep portions of the shoe and foot to afford protection thereto." This is repeated in column 1, lines 47-51; in column 3, lines 7-9; and in column 4, lines 19-21 (in claim 1).

Similarly, the same description is provided by O'DONNELL. See, for example, column 2, lines 43-45 of O'DONNELL: "The foot protector flap 32 is relatively rigid and is shaped to conform to the metatarsal and instep portions of the shoe upper." See also, column 3, lines

24-28: "After the shoe is applied to the wearer's foot the lacings are tightened and the flap 32 pivoted downwardly to the position shown in FIGS. 1, 3 and 4 *covering the metatarsal and instep portions ....*"

Thus, one skilled in the art would readily appreciate that the flaps/guards of ELLIS and O'DONNELL do not extend sufficiently to cover the flexion fold.

In this regard, in the direction from the toe to the heel of a shoe (or of a foot), first comes the metatarsal zone, then the instep, and then the flexion fold zone. As further explained below, beyond the flexion fold zone is the tibial support zone (or the upper front zone which covers the lower part of the leg).

To support his contention, Applicant directs attention to **Attachment A**, which includes a definition for the term "instep" in the reference book *The Complete Footwear Dictionary*, Second Edition, Krieger Publishing Company, Malabar, Florida, 2000, pages 90-91. The term "instep" is there defined as "[t]he top inner portion of the foot at its crest, formed by the articulations of the bases of the first three metatarsal bones with the navicular and the first two cuneiform bones."

Further, **Attachment B**, in page 1 of 4 thereof, provides a diagram of the bones of the foot. The aforementioned metatarsal bones, the navicular and the first two cuneiform bones are shown. Also shown in that diagram in **Attachment B** are the bones of the tibia.

Taking together the definition provided by **Attachment A** and the diagram of **Attachment B**, one can see that the covers of ELLIS and O'DONNELL, which, as mentioned above regarding ELLIS, "extends rearwardly over the toe, metatarsal and instep portions of the shoe and foot to afford protection thereto," extends over "the top inner portion of the foot at its crest, formed by the articulations of the bases of the first three metatarsal bones with the navicular and the first two cuneiform bones."

In addition, the flexion fold zone being the zone, or crease, at which the tibia folds upon the foot, one skilled in the art will readily appreciate that the flaps/guards of ELLIS's shoe and

O'DONNELL's shoe do not extend sufficiently to cover the flexion fold. In fact, **Attachment A** and **Attachment B** show that the instep is quite forward of the flexion fold zone.

The showing of **Attachment A** and **Attachment B** is fully consistent with the disclosures of ELLIS and O'DONNELL.

That is, both ELLIS and O'DONNELL explain why the guard flap 36 (of ELLIS) and the protector flap 32 (of O'DONNELL) do *not* extend to the flexion fold zone. For example, in the two paragraphs appearing in column 1, lines 29-37, and column 3, line 71, to column 4, line 4, ELLIS explains that his "guard flap ... will not interfere with the free flexing of the foot and shoe while walking ...." Similarly, see column 1, lines 30-31 of O'DONNELL: "... the protector is relatively light and compact and will not interfere with the flexing of the shoe ...."

If the Examiner's position were correct, *i.e.*, that the covers of ELLIS and O'DONNELL (guard flap 36 and protector flap 32, respectively) cover a flexion fold zone, *then the covers of ELLIS and O'DONNELL would interfere with the flexing of the shoe.*

At least in view of the foregoing, reconsideration and withdrawal of the rejections based upon ELLIS and O'DONNELL are requested.

**2.     The Location of the Flexion Fold Zone Can be Determined Regardless of the Type and Size of the Shoe**

As mentioned above, the §102(b) rejection of each of ELLIS and O'DONNELL includes the statement "the location of the flexion fold zone is dependent on the type and size of the shoe and will vary from one type of shoe to another."

Applicant disagrees. If the Examiner were to maintain her position that the location of the flexion fold varies depending upon the type and size of the shoe, she is respectfully requested to provide an affidavit under 37 CFR §104(d)(2) to support the contention.

Just as with other parts of a shoe, regardless of the size or shape of the shoe, their locations can be determined. That is, regardless of the length of a shoe, the location of the heel

can be determined, the location of the toe box can be determined, the location of the ankle region can be determined. Likewise, the location of the instep, the location of the tibial zone and the location of the flexion fold --- rearward of the instep --- can be determined.

Attention is directed to the sentence bridging pages 225 and 226 of **Attachment C**, which is an excerpt from *The Last of the Mohicans*, by James Fenimore Cooper, Popular Publishing Co., LLC, New York, NY, 2001:

'One moccasin like another! you may as well say that one foot is like another; though we all know that some are long, and others short; some broad, and others narrow; some with high, and some with low insteps; some in-toed and some out. One moccasin is no more like another than one book is like another; though they who can read in one are seldom able to tell the marks of the other.'

Despite the fact that the types and sizes of a shoe may vary, one can determine *where* the instep, *e.g.*, is located, despite the fact that the instep might be relatively high or low.

And, in this regard, locating of the "instep portions of the shoe" of ELLIS and O'DONNELL, beyond their disclosed locations as the rearward extent of their respective covers, would be contrary to the disclosures of ELLIS and O'DONNELL. There is no teaching or suggestion in either ELLIS or O'DONNELL that the "instep portions" of the covers of ELLIS and O'DONNELL extend rearwardly to the flexion folds of the shoe.

The assertion in the rejections that "the location of the flexion fold zone is dependent on the type and size of the shoe and will vary from one type of shoe to another" is not supported by any teaching or suggestion. Further, Applicant submits that it would be beyond the ordinary meaning of the term "instep" or "instep portion" to conclude that it would extend to within the flexion fold, as the aforementioned assertion appears to be intended to imply.



In this regard, attention is directed to the page 73 of **Attachment D**, which is an excerpt from *Tess of the D'Urbervilles*, by Thomas Hardy, The Modern Library of New York, Published by Random House, 1919, which describes the heroine Tess, in ridding herself of the company of those who had just insulted her, accepting rescue by Alec D'Urbervilles by being helped upon his horse:

But coming as the invitation did at the particular juncture when fear and indignation at these adversaries could be transformed by a spring of the foot into a triumph over them, she abandoned herself to her impulse, *put her toe upon his instep*, and leaped onto the saddle behind him.

In describing Tess stepping upon the instep of Alec, Hardy did not leave the reader to wonder about the location of Alec D'Urbervilles' instep, such as, *e.g.*, whether the flexion fold of his shoe might be located so far forwardly that the instep might not provide a sufficient perch for another's foot, or whether the instep might be located so far rearwardly that it might run through the flexion fold and up the tibial support zone of the shoe and thereby leaving the reader wonder what portion of Alec's foot/leg Tess stepped upon.

Instead, Applicant submits, regardless of the type or size of Alec's shoe (and Hardy did not describe it), the reader can picture Tess stepping upon the top of his foot, *i.e.*, forward of his lower leg.

Similarly, when ELLIS and O'DONNELL describe their flaps/guards as extending over the instep portions of their shoes, Applicant submits that one skilled in the art is not confused over the portion of their shoes over which their flaps/guards extend: *over the instep portions* and not rearward thereof --- regardless of the type or size of the shoe. If the shoe were small, likewise the flap/guard would be proportionally smaller; if the shoe were large, likewise the

flap/guard would be proportionally larger. But there is no teaching or suggestion that the flap/guard would extend rearward of the location that ELLIS and O'DONNELL explicitly describe.

3. **Independent Claim 44 Now Additionally Specifies Relative Rigidity of the Cover Above the Ankle Zone**

In addition to describing the cover being in the flexion fold zone, independent claim 44 specifies that the cover includes a front end zone, a flexion fold zone, and a portion that extends above the ankle zone of the boot, whereby the cover is relatively rigid in said front end zone, said flexion fold zone, and said portion that extends above the ankle zone.

Neither ELLIS nor O'DONNELL teach or suggest a cover portion that extends above the ankle zone of a shoe, nor is there any reason that the cover of either ELLIS or O'DONNELL would be so modified.

4. **Independent Claim 44 Calls for the Boot to be a Snowboard Boot**

Independent claim 44 calls for the boot to which a rigidifying cover is attached is a "snowboard boot."

Section 6 of the Office action includes a statement that "the term 'snowboard boot' in the preamble has been accorded no weight in the examination in keeping with the court's instructions in *Kropa v. Robie*, 187 F.2d 533, 88 USPQ 478."

Applicant respectfully submits that although the preamble of a claim does not usually limit the scope of a claim, the courts have not established a rule with the certitude that the Examiner seems to have implied. Instead, as explained by the Court of Appeals for the Federal Circuit in *Pitney Bowes Inc. v. Hewlett-Packard Co.*, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999):

'[A] claim preamble has the import that the claim as a whole suggests for it.' (citation omitted) If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is 'necessary to give life, meaning, and vitality' to the claim, then the claim preamble should be construed as if in the balance of the claim.' *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPO 478, 480-81 (CCPA 1951) ....

In the case of independent claim 44, by specifying that the boot of the invention of claim 44 is a "snowboard boot," he has more than merely set out the environment, or intended use, in which the invention is to be used. Instead, in claim 44, when considered "as a whole," as explained in *Pitney Bowes*, the relatively rigid cover of the invention is seen to have specific structural importance for snowboard boots. Further, that importance is described *within the body of claim 44*. That is, the cover "increas[es] flexural rigidity of said snowboard boot" and "improve[s] transmission of forces from said snowboard boot to an attached snowboard."

The flaps of ELLIS and O'DONNELL do not teach or suggest any such relationships.

At least for the reasons given above, Applicant requests that the rejections under 35 USC §102(b) and §103(a), based upon ELLIS and O'DONNELL, alone or in combination with LANDRY, be withdrawn.

**5. ELLIS Fails to Teach or Suggest Plural Covers Having Different Rigidities**

Applicant requests that the rejection of claims 27, 43, and 48 under 35 USC §103(a) as being unpatentable over ELLIS be withdrawn.

In the rejection the Examiner makes reference to column 3, lines 2-6 of ELLIS to support the rejection of claims 27, 43, and 48. Claim 27, for example, specifies "a plurality of covers to be associated the same shoe, ... said plurality of covers having respectively different rigidities."

In the citation from ELLIS's specification, the flap 36 is described as being made from "a strong metal, such as steel, but it may also be made of other rigid high impact materials ...." Nowhere in ELLIS's disclosure is there any teaching or suggestion that one boot can have a plurality of different covers having different rigidities.

Applicant's rejected claims do *not* represent "mere duplication and rearranging of the essential working parts of a device" as the rejection claims. Instead, Applicant's disclosure is clear that only a *single* cover is used at any particular time. That is, *plural covers are not essential*. Further, it is only Applicant who has described that a snowboarder, for example, could be supplied with a variety of differently rigid covers so as to modify the transmission of forces from his boot to his board. The plurality of covers, then, represents a particular structural limitation having a particular advantage not taught or suggested by ELLIS.

**F. Withdrawal of Rejections Based Upon ELLIS or O'DONNELL in view of EDWARDS**

Applicant requests that the rejections of claims 19, 30, and 31 under 35 USC §103(a), based upon ELLIS and O'DONNELL, taken in combination with EDWARDS, be withdrawn.

Claims 19 and 31 depend from independent claims 15 and 29, respectively. Each of claims 19 and 31 calls for the device/cover to extend from a tibial support zone to a metatarsophalangeal joint of the article of footwear and/or to the zone of the base of the toes.

Similarly, independent claim 30 refers to the cover having, *inter alia*, an upper front zone which extends above the flexion fold zone.

The rejection relies upon EDWARDS as supposedly suggesting a modification of the disclosures of ELLIS and O'DONNELL that would have resulted in Applicant's invention recited in claims 19, 30, and 31.

EDWARDS discloses a shoe 10 including a cover 22 that has a rigid shell 23, at the upper end of which a leather loop 25 is fastened by a rivet 26. See column 2, lines 33-41. This

means that one part 23 of the cover 22 is rigid, and that another part 25 of the cover is relatively soft/flexible.

In fact, in column 1, lines 52-55, and column 2, lines 56-59, EDWARDS explains that the "splash guard" is made from "a piece of *flexible leather*."

By contrast, in independent claim 15 (the limitations of which are part rejected claim 19), Applicant calls for the cover to be made of a rigid or semi-rigid material in the entire length of the cover. In independent claim 29 (the limitations of which are part of rejected claim 31), Applicant calls for the cover to be rigid or semi-rigid at the flexion fold zone and at the front end zone. Similarly, in rejected claim 30, Applicant calls for the cover to be made of a rigid or semi-rigid material in the upper part, in the intermediate part, and in the part of the cover.

In addition to the splash guard 32 of EDWARDS not being semi-rigid or rigid, it would be contrary to the express disclosure of EDWARDS to make the splash guard something other than flexible. Indeed, in column 2, lines 48-51, EDWARDS explains that "the guard extends across the entire instep portion of the boot 10, but it leaves a considerable length above the instep portion unprotected at the front of the boot." Further, in column 3, lines 28, to column 4, line 2 (claim 1), EDWARDS explains that the *rigid* instep guard terminates at the "upper extreme of the instep portion of the boot" and that the *flexible* splash guard is connected to the upper end of the rigid instep guard.

**G. Withdrawal of Rejections Based Primarily Upon EDWARDS**

Applicant requests that the rejections under 35 USC §102(b) and §103(a), based upon EDWARDS, alone or in combination with ELLIS, be withdrawn.

In independent claim 14, Applicant recites a "rigid or semi-rigid cover" that is more rigid than the upper front surface of the upper (the upper front surface being above the flexion fold zone), and more rigid than the flexion fold zone "so as not to interfere with the free flexing of the shoe while a wearer's foot is positioned within the shoe."

In independent claim 15, Applicant calls for the cover to be made of a rigid or semi-rigid material in the entire length of the cover.

In independent claim 29, Applicant calls for the cover to be rigid or semi-rigid at the flexion fold zone and at the front end zone.

In independent claim 30, Applicant calls for the cover to be made of a rigid or semi-rigid material in the upper part, in the intermediate part, and in the part of the cover.

In independent claim 44, Applicant calls for the cover to be relatively rigid in the flexion fold zone and in a portion of the cover above the ankle zone and for the cover to be attached to a relatively flexible upper.

As mentioned above, in addition to the splash guard 32 of EDWARDS not being semi-rigid or rigid, it would be contrary to the express disclosure of EDWARDS to make the splash guard something other than flexible. Further, as also mentioned above, in column 2, lines 48-51, EDWARDS explains that "the guard extends across the entire instep portion of the boot 10, but it leaves a considerable length above the instep portion unprotected at the front of the boot." Further, in column 3, lines 28, to column 4, line 2 (claim 1), EDWARDS explains that the *rigid* instep guard terminates at the "upper extreme of the instep portion of the boot" and that the *flexible* splash guard is connected to the upper end of the rigid instep guard.

Therefore, EDWARDS fails to teach or suggest Applicant's invention as specified in the rejected claims and there would be no reason to have modified EDWARDS's guard in a way that would have resulted in Applicant's invention.

#### **H. New Claims**

In the amendment above, Applicant has added new claims 49-61, which are believed to patentably define his invention over the cited documents.

In claim 49, Applicant further limits the invention of independent claim 14 by specifying that the cover is a rigid cover.

In claim 50, also depending from claim 14, Applicant calls for the cover to comprise "a single piece of material along an entirety of a longitudinal extent of said cover." Of course, because EDWARDS's instep guard and splash guard are made of two different materials and are connected to each other, there is not a guard, extending as expressed in claim 14, that is made of a single piece of material.

New claim 51 depends from independent claim 15 and also calls for the cover to be made of a *rigid* material, such rigid material extending "along the entirety of the longitudinal extent of said cover." No such cover is taught or suggested by ELLIS, O'DONNELL, or EDWARDS, nor would it have been obvious to have so modified such covers.

New claim 52, also depending from independent claim 15, like claim 50 mentioned above, calls for the cover to comprise "a single piece of material along the entirety of the longitudinal extent of said cover."

New claim 53 depends from independent claim 29 and calls for the cover to be "rigid or semi-rigid at said tibial support zone." Of course, the splash guard of EDWARDS, as mentioned above, is made of a flexible leather.

New claim 54, also depending from independent claim 29, further limits the invention thereof by specifying that the "cover is rigid at front end zone, at said flexion fold zone, and at said tibial support zone."

New claim 55, also depending from independent claim 29, like claims 50 and 52 mentioned above, calls for the cover to comprise "a single piece of material along an entirety of a longitudinal extent of said cover."

New claim 56, depending from independent claim 30, calls for the cover to comprise "a rigid material along an entirety of said upper part, an entirety of said intermediate part, and an entirety of said lower part."

New claim 57, also depending from independent claim 30, describes the cover as comprising "a single piece of material along said upper part, said intermediate part, and said lower part."

New claim 58 is independent and is specifically limited to "A snowboard boot assembly" that comprises, *inter alia*, a snowboard boot and a "front spoiler for increasing rigidity of flexion of said upper at least in said flexion fold zone for improving transmission of forces from the snowboarder to the snowboard, said cover extending in said tibial support zone, said front end zone and said flexion fold zone." None of the cited references teach or suggest a snowboard boot as specified in claim 58.

New claim 59 depends from independent claim 58 and calls for the spoiler to comprise "a semi-rigid material in said tibial support zone, in said front end zone and in said flexion fold zone."

New claim 60, also depends from independent claim 58 and further specifies that the spoiler comprises a rigid material in the tibial support zone, in the front end zone and in the flexion fold zone.

Finally, new claim 61, also depending from independent claim 58, specifies that the "spoiler comprises one piece of material in said tibial support zone, in said front end zone and in said flexion fold zone."

### **SUMMARY AND CONCLUSION**

Entry of the amendment is requested, together with reconsideration and withdrawal of the objections and rejections.

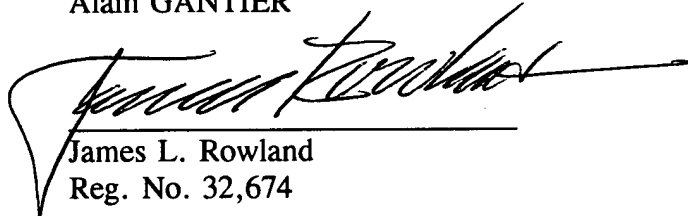
A check is enclosed for payment of a claim fee and a fee for an information disclosure statement. No additional fee is believed to be due at this time. However, the Commissioner is authorized to charge any fee required for acceptance of this reply as timely and complete to Deposit Account No. 19-0089.



Further, although no extension of time is believed to be necessary at this time, if it were to be found that an extension of time were necessary to render this reply timely and/or complete, Applicant requests an extension of time under 37 CFR §1.136(a) in the necessary increment(s) of month(s) that would render this reply timely and/or complete and the Commissioner is authorized to charge any necessary extension of time fee under 37 CFR §1.17 to Deposit Account No. 19-0089.

Any comments or questions concerning this application can be directed to the undersigned at the telephone or fax number given below.

Respectfully submitted,  
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**Attachments A, B, C, D**